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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,262	01/30/2004	Yuusuke Tanba	H6808.0036/P036	4836
24998	7590	01/10/2005	EXAMINER	
DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP				BERMAN, JACK I
2101 L Street, NW				
Washington, DC 20037				
ART UNIT		PAPER NUMBER		
		2881		

DATE MAILED: 01/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/767,262	TANBA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jack I. Berman	2881	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 10-16 is/are allowed.
- 6) Claim(s) 1-9, 17 and 18 is/are rejected.
- 7) Claim(s) 19 and 20 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 30 January 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \*    c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date 1/30/04.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

Figures 5 and 6 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.121(d)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7, 17, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Müller et al. Müller et al. discloses a charged particle beam device having a source of charged particles (1), and a charged particle optical system for focusing (3) primary charged particle beams emitted from said source of charged particles and scanning (5) the primary charged beams on a sample (4), said device comprising:

a dark field signal detector for detecting dark field signal particles transmitted through the sample, wherein said dark field signal detector includes a transmitted signal conversion member and scintillator (11) for emitting secondary charged particles and light by collisions of charged particles transmitted through the sample (see lines 2-5 in column 4);

means (camera tube 13) for converting the light emitted from said scintillator into an electric signal at a position to detect the light;

an opening of a size, formed in said transmitted signal conversion member and scintillator, through which the charged particles scattered within and transmitted through the sample can pass (see Fig. 2);

a detector (20) for detecting the secondary charged particles converted by said transmitted signal conversion member and scintillator;

a bright field signal detector comprising a transmitted signal particle detection means (32) disposed at a position to detect transmitted signal particles having passed through said opening of said transmitted signal conversion member and scintillator; and

an aperture (29) for obstructing part of the transmitted signal particles reaching said transmitted signal particle detection means disposed between said transmitted signal particle detection means and said transmitted signal conversion member and scintillator.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Müller et al. in view of Koike et al. At lines 13-70 in column 3, Koike et al. teaches to configure the objective lens (30) of a transmission-type electron microscope to leak a focusing magnetic field toward a sample (37) in order to detect the secondary electron image as well as the scanning transmission electron image. It would have been obvious to a person having ordinary skill in the art to apply this teaching of Koike et al. to the Müller et al. apparatus by configuring Müller et al.'s objective lens (3) to leak a magnetic field toward the sample (4) so that more information could be gathered from the sample by detecting both the secondary electrons emitted by the sample and the electrons transmitted through the sample upon irradiation by the primary electron beam.

Claims 19 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 10-16 are allowed.

The following is a statement of reasons for the indication of allowable subject matter: The prior art does not teach to provide a Faraday cup or other electrode in the opening of Müller et al.'s transmitted signal conversion member and scintillator and a power supply to apply a voltage to this electrode; to form this transmitted signal conversion member with two electrodes having openings for the transmitted charged particles to pass through and a detector between

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these two electrodes; or to provide a power supply to apply a voltage to the aperture located between the dark field signal detector and the bright field signal detector.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack I. Berman whose telephone number is (571) 272-2468. The examiner can normally be reached on M-F (8:30-6:00) with every second Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John R. Lee can be reached on (571) 272-2477. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jack I. Berman  
Primary Examiner  
Art Unit 2881

jb  
1/6/05